



**CITY OF LODI
COUNCIL COMMUNICATION**

TM

AGENDA TITLE: Authorize City Manager to enter into a Professional Services Agreement with PALS to Perform the Shelter's Administrative Functions as Directed in the 2009/10 Budget.

MEETING DATE: August 5, 2009

PREPARED BY: City Attorney's Office

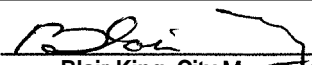
RECOMMENDED ACTION: Authorize City Manager to enter into a Professional Services Agreement with PALS to perform the Shelter's administrative functions.

BACKGROUND INFORMATION: Council considered this matter previously in adopting the 2009/10 budget. For the last several years, the City has faced problems in managing its animal operations. The primary difficulty has involved regular office hours: because the shelter is staffed with animal control officers who are often called away to enforcement duties, there have been times where the office had to be closed. Moreover, record keeping and processing (other than mandated records) occasionally lag for the same reasons. People Assisting the Lodi Shelter "PALS", who have a long history of partnership with the Shelter (including acquiring the current cat shelter building, installing the dog run and volunteer services), recognized the issue and approached Police Staff with an offer to staff the office, and provide professional administrative services to insure that the shelter can be open for adoptions and provision of other non-enforcement services during normal business hours.

Police Staff and PALS reached the attached draft agreement to recommend for Council consideration with the following primary terms:

- 1) Payment: PALS will be paid the gross collections from animal licensing, adoption fees and unaltered animal fees with a guaranteed minimum of \$50,000.00 per year.
- 2) Examples of PALS duties include:
 - a. City contracts with PALS to perform all adoption, fostering and other placement of all domestic animals that come within the possession of the Animal Services Division of the Police Department.
 - b. City contracts with PALS to process and maintain records of all donations and fundraisers to and for the Lodi Animal Shelter. All donations and fundraiser revenue will be applied by PALS for the benefit of the Shelter animals and accounted for to the City.
 - c. PALS will employ an Office Manager to oversee and maintain office systems that collect and generate animal data. PALS Office Manager will supervise and train office volunteers in data entry, adoption paperwork and telephone answering protocol.
 - d. PALS will staff the Animal Shelter from 9:00 am to 5:00 pm Monday through Friday and 11:00 am to 4:00 pm Saturday, noon hour lunch and City holidays excepted.

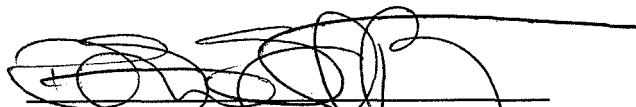
APPROVED:


Blair King, City Manager

- e. PALS will issue licenses for Shelter adoptions and walk-ins and collect licensing fees at the rate set by City Council.
 - f. PALS will issue license renewal reminders, collect license fees, issue licenses and maintain a license database at City's expense.
 - g. PALS will ensure that each animal admitted to the Shelter is administered a behavior assessment test. PALS will not place animals, and will issue and maintain records verifying the issuance of behavioral assessment warnings and liability waivers on forms provided by City for animals scoring below the thresholds set by the Police Chief.
 - h. PALS will issue spay/neuter vouchers to the public and track the individual vouchers and account to City for the value of outstanding vouchers.
 - i. PALS will transport PALS transferred animals for veterinarian care and spaying/neutering.
 - j. PALS will show animals during posted adoption hours PALS will prepare adoption paperwork.
- 3) The City of Lodi may at its option commission its independent accounting firm to conduct an annual audit of PALS at City expense. PALS shall make all records necessary for the audit to the auditor and make its staff available for interview within 3 days of the auditors request.
 - 4) PALS will process all paperwork for expenditures out of the City 2302 (spay/neuter prior to adoption) account and the City 2303 (veterinary services/spay/neuter at adoption) account and for the CDBG/HUD fund reimbursement account for approval by the Police Chief's designee.
 - 5) PALS will provide a fidelity bond to City in the amount of \$50,000.
 - 6) PALS services shall not include:
 - 1. Enforcement of animal ordinances.
 - 2. Response to emergency calls.
 - 3. Stray pick up.
 - 4. Euthanasia of shelter animals.
 - 5. Quarantine of animals.
 - 6. Intake at shelter to include vaccinations and medical evaluations.
 - 7. Cleaning of shelter kennels/cages and provision of food, litter and supplies for shelter.

FISCAL IMPACT: Payment of all license, unaltered animal and adoption fees to PALS to a guaranteed minimum of \$50,000/year. The 2009-10 budget reflects the following historical revenues for these two funds:

	2006-07 Actuals	2007-08 Actuals	2008-09 Budget	2008-09 Estimated Actuals	2009-10 Final
Animal Licenses	30,654	26,090	31,000	15,100	25,000
Animal Shelter Fees	26,495	28,348	33,000	22,500	25,000


D. Stephen Schwabauer, City Attorney

**PROFESSIONAL SERVICES AGREEMENT
FOR ANIMAL SHELTER SERVICES**

THIS AGREEMENT is made and entered into this day of _____, 2009 ("Effective Date"), by and between the CITY OF LODI, a municipal corporation ("CITY"), and LODI SHELTER PALS, a non-profit corporation ("LSP").

WITNESSETH:

- A. WHEREAS, CITY proposes to have LSP provide animal shelter office management services as described in the Scope of Services; and
- B. WHEREAS, LSP, by virtue of the fact that its directors are also the directors and officers of People Assisting Lodi Shelter, another nonprofit corporation ("PALS"), represents that it has specialized expertise to perform the services herein contemplated; and
- C. WHEREAS, CITY and LSP desire to contract for the specific services described below (the "Project") and desire to set forth their rights, duties and liabilities in connection with the services to be performed; and
- D. WHEREAS, no official or employee of CITY has a financial interest, within the provisions of California Government Code Sections 1090-1092, in the subject matter of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

1.0. SERVICES PROVIDED BY LSP

1.1. Scope of Services. LSP shall provide the professional services described in the Scope of Services attached hereto as Exhibit "A" and incorporated herein by reference. City shall provide LSP with sufficient and existing space in the CITY'S office facilities to perform such services.

1.2. Professional Practices. All professional services to be provided by LSP pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professionals in similar fields and circumstances in accordance with sound professional practices. LSP shall advise CITY of any changes in any laws that may affect - LSP's performance of this Agreement.

1.3. Warranty. LSP warrants that it shall perform the services required by

this Agreement in compliance with all applicable Federal and California employment laws including, but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers' compensation insurance and safety in employment; and all other Federal, State and local laws and ordinances applicable to the services required under this Agreement. LSP shall indemnify and hold harmless CITY from and against all claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description including attorneys' fees and costs, presented, brought, or recovered against CITY for, or on account of any liability under any of the above-mentioned laws, which may be incurred by reason of LSP's performance under this Agreement.

1.4. Non-discrimination. In performing this Agreement,– LSP shall not engage in, nor permit its agents to engage in, discrimination in employment of persons, or provision of services to persons, because of their race, religion, color, national origin, ancestry, age, physical handicap, medical condition, marital status, sexual gender or sexual orientation, except as permitted pursuant to Section 12940 of the Government Code. Violation of this provision may result in the imposition of penalties referred to in Labor Code, Section 1735.

1.5. Delegation and Assignment. This is a personal service contract, and the duties set forth herein shall not be delegated or assigned to any person or entity without the prior written consent of CITY. LSP may engage a subcontractor(s) as permitted by law and may employ other personnel to perform services contemplated by this Agreement at LSP's sole cost and expense.

1.6. Fingerprint Checks. All LSP employees and volunteers performing services under this Agreement shall pass a City fingerprint check. City shall, in the exercise of its reasonable discretion, have authority to approve or disapprove of all onsite employees and volunteers.

2.0. COMPENSATION AND BILLING

2.1. Compensation. LSP shall be paid the entire gross proceeds from its collection of animal licenses, adoption fees and unaltered animal fees for its services under this Agreement. In no event will that amount be less than \$50,000.00 per year paid in equal monthly installments of \$4,175.00. Collections in excess of \$50,000 ("Overcollection Payment") will be paid in six month increments with collections over \$25,000.00 for each six month period paid by CITY to LSP within thirty (30) days after each such six (6) month period. If, at the end of the fiscal year, total collections do not support the first 6 months Overcollection Payment, the excess will be deducted from LSP's upcoming monthly payments or, if none are pending, refunded to City.

2.2. Additional Services. LSP shall not receive compensation for any services provided outside the scope of services specified in the Scope of

Services unless CITY, prior to LSP performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable.

2.3. Method of Billing. Any additional services approved and performed pursuant to this Agreement shall be designated as "Additional Services" and shall identify the number of the authorized change order, where applicable, on all invoices.

2.4. Records and Audits. Records of LSP's services relating to this Agreement shall be maintained in accordance with generally recognized accounting principles and shall be made available to CITY for inspection and/or audit at mutually convenient times for a period of three (3) years from the Effective Date of this Agreement.

3.0 TIME OF PERFORMANCE

3.1 Commencement and Completion of Work. The professional services to be performed pursuant to this Agreement shall commence within thirty (30) days from the Effective Date of this Agreement. Failure to commence work in a timely manner and/or diligently pursue work to completion may be grounds for termination of this Agreement.

3.2 Excusable Delays. Neither party shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of a party.

4.0 TERM AND TERMINATION

4.1 Term. This Agreement shall commence on the Effective Date and continue for a period of one (1) year, ending on _____. At CITY either party's sole option, exercised in writing, this Agreement shall be renewable for two (2) successive one (1) year periods unless previously terminated as provided herein or as otherwise agreed to in writing by the parties.

4.2 Notice of Termination.

(a) Either party may terminate this agreement upon 30 days written notice.

4.3 Compensation. In the event of termination by CITY as set forth in 4.2, CITY shall pay LSP for reasonable costs incurred and professional services

satisfactorily performed up to and including the date of ~~CITY~~ the written notice of termination. Compensation for work in progress shall be prorated as to the percentage of work completed as of the effective date of termination in accordance with the fees set forth herein.

4.4 Documents. In the event of termination of this Agreement, all documents prepared by LSP in its performance of this Agreement shall be delivered to the CITY within ten (10) days of delivery of termination notice ~~to~~, at no cost to CITY. Any use of uncompleted documents without specific written authorization from LSP shall be at CITY's sole risk and without liability or legal expense to LSP.

5.0 INSURANCE

5.1. Minimum Scope and Limits of Insurance. LSP shall obtain and maintain during the life of this Agreement all of the following insurance coverages:

(a) Comprehensive general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate.

(b) Automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate.

(c) Workers' compensation insurance as required by the State of California.

5.2. Endorsements. The comprehensive general liability insurance policy shall contain or be endorsed to contain the following provisions:

(a) Additional insureds: "The City of Lodi and its elected and appointed boards, officers, agents, and employees are additional insureds with respect to this subject project and contract with the City of Lodi."

(b) Notice: "Said policy shall not terminate, nor shall it be cancelled, nor the coverage reduced, until thirty (30) days after written notice is given to CITY."

(c) Other insurance: "Any other insurance maintained by the City of Lodi shall be excess and not contributing with the insurance provided by this

policy."

5.3. Certificates of Insurance. LSP shall provide to CITY certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by CITY, prior to performing any services under this Agreement.

5.4. Non-limiting. Nothing in this Section shall be construed as limiting in any way, the indemnification provision contained in this Agreement, or the extent to which LSP may be held responsible for payments of damages to persons or property.

6.0. GENERAL PROVISIONS

6.1. Entire Agreement. This Agreement constitutes the entire Agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement.

6.2. Representatives. CITY's Police Chief or his/her designee shall be the representative of CITY for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of the CITY, called for by this Agreement, except as otherwise expressly provided in this Agreement.

LSP shall designate a representative for purposes of this Agreement who shall be authorized to issue all consents, approvals, directives and agreements on behalf of LSP called for by this Agreement, except as otherwise expressly provided in this Agreement.

6.3. Additional Representatives. CITY shall designate an employee of CITY acceptable to LSP to work directly with LSP in the performance of this Agreement.

LSP shall designate a representative who shall represent it and be its agent in all consultations with CITY during the term of this Agreement. LSP or its representative shall attend and assist in all coordination meetings called by CITY.

6.4. Notices. Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery, facsimile or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: a) at the

time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such communication is sent by facsimile; and c) 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

If to LSP: Lodi Shelter Pals
2414 W. Kettleman Lane, Suite 210-2207
Lodi, California
Attention: Nancy Alumbaugh

If to CITY: Blair King, City Manager
City of Lodi
221 West Pine Street
Lodi, CA 95240

With copies to: D. Stephen Schwabauer, City Attorney
City of Lodi
221 West Pine Street
Lodi, CA 95240

David Main
Chief of Police
221 West Pine Street
Lodi, CA 95240

6.5. Drug-free Workplace Policy. LSP shall provide a drug-free workplace by complying with all provisions set forth in CITY's policy, attached hereto as Exhibit "B" and incorporated herein by reference. LSP's failure to conform to the requirements set forth in CITY's policy shall constitute a material breach of this Agreement and shall be cause for immediate termination of this Agreement by CITY.

6.6. Attorneys' Fees. In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

6.7. Governing Law. This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in San Joaquin County, California.

6.8. Assignment. LSP shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of LSP's interest in this Agreement without CITY's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of CITY's consent, no subletting or assignment shall release LSP of LSP's obligation to perform all other obligations to be performed by LSP hereunder for the term of this Agreement.

6.9. Indemnification and Hold Harmless. LSP shall protect, defend, indemnify and hold harmless CITY and its elected and appointed officials, officers, and employees from any and all claims, liabilities, expenses, including attorney fees, damage to property or injuries to or death of any person or persons or damages of any nature including, but not by way of limitation, all civil claims or workers' compensation claims arising out of or in any way connected with the intentional or negligent acts, error or omissions of LSP, its employees,

agents or subcontractors in the performance of this Agreement.

6.10. Independent Contractor. LSP is and shall be acting at all times as an independent contractor and not as an employee of CITY. LSP shall secure, at its expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for LSP and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder.

6.11. Ownership of Documents. All findings, reports, documents, information and data including, but not limited to, computer tapes or discs, files and tapes furnished or prepared by LSP or any of its subcontractors in the course of performance of this Agreement, shall be and remain the sole property of CITY. LSP agrees that any such documents or information shall not be made available to any individual or organization without the prior written consent of CITY. Any use of such documents for other projects not contemplated by this Agreement, and any use of incomplete documents, shall be at the sole risk of CITY and without liability or legal exposure to LSP. CITY shall indemnify and hold harmless LSP from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from CITY's use of such documents for other projects not contemplated by this Agreement or use of incomplete documents furnished by LSP. LSP shall deliver to CITY any findings, reports, documents, information, data, in any form, including but not limited to, computer tapes, discs, files, audio tapes or any other Project related items as requested by CITY or its authorized representative, at no additional cost to the CITY.

6.12. Public Records Act Disclosure. LSP has been advised and is aware that all reports, documents, information and data including, but not limited to, computer tapes, discs or files furnished or prepared by LSP, or any of its subcontractors, and provided to CITY may be subject to public disclosure as required by the California Public Records Act (California Government Code Section 6250, *et. seq.*).

6.13. Prohibited Employment. LSP will not employ any regular employee of CITY while this Agreement is in effect.

6.14. Order of Precedence. In the event of an inconsistency in this Agreement and any of the attached Exhibits, the terms set forth in this Agreement shall prevail.

6.15. Costs. Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

6.16. No Third Party Beneficiary Rights. This Agreement is entered into for the sole benefit of CITY and LSP and no other parties are intended to be

direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

6.17. Headings. Paragraphs and subparagraph headings contained in this Agreement are included solely for convenience and are not intended to modify, explain or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.

6.18. Construction. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

6.19. Amendments. Only a writing executed by the parties hereto or their respective successors and assigns may amend this Agreement.

6.20. Waiver. The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

6.21. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party is materially impaired, which determination as made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

6.22. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

6.23. Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so, the parties hereto are formally bound to the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

CITY OF LODI, a municipal corporation

LSP, a California non-profit
Corporation

Blair King, City Manager

Nancy Alumbaugh
CEO/TREASURER

ATTEST:

RANDI JOHL, City Clerk

Approved as form:

D. STEPHEN SCHWABAUER
City Attorney, City of Lodi

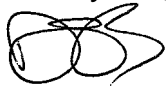


EXHIBIT A

SCOPE OF SERVICES

LSP DUTIES AND RESPONSIBILITIES:

1. ~~City~~ CITY contracts with LSP to perform all adoption, fostering and other placement of all domestic animals that come within the possession of the Animal Services Division of the Police Department.
2. CITY contracts with LSP to process and maintain records of all donations documented on CITY receipts to and for the benefit of Shelter animals.
- 3, LSP will employ an Office Manager to oversee and maintain office systems that collect and generate animal data, including the inventory of animal population. LSP's Office Manager will supervise and train office volunteers in data entry, adoption paperwork and telephone answering protocol.
- 4, LSP will staff the Animal Shelter office from 9:00 am to 5:00 pm Monday through Friday and 11:00 am to 4:00 pm Saturday, noon hour lunch and CITY closures excepted.
5. LSP will issue licenses for Shelter adoptions and walk-ins and collect licensing fees at the rate set by CITY Council.
6. LSP will issue license renewal reminders, collect license fees, issue licenses and maintain a license database at CITY's expense. The issuance of the renewal reminders and maintenance of the database will be phased in over the first three (3) months of this Agreement.
7. LSP will ensure that each animal admitted to the Shelter is administered
a
behavior assessment test. LSP will not place for adoption animals which may not meet acceptable scoring criteria. LSP will issue and maintain records verifying the issuance of behavioral assessment warning and liability waivers on forms provided by CITY, for animals scoring below the thresholds set by the Police Chief. LSP may notify PALS (People Assisting Lodi Shelter) of any animals that may require rehabilitation to meet such thresholds.
8. LSP will issue spay/neuter vouchers to the public (as funds are available),
track the individual vouchers and account to CITY for the value of outstanding vouchers.
- 9 LSP will coordinate with Shelter staff and PALS for transport of Shelter

animals for veterinarian care and spaying/neutering. Shelter Staff will authorize all animals to be sent for veterinary care and spaying neutering.

10. LSP will show animals during posted adoption hours. LSP will prepare adoption paperwork.
11. CITY may at its option commission its independent accounting firm to conduct an annual audit of LSP at CITY expense. LSP shall make all records necessary for the audit to the auditor and make its staff available for interview within ~~3~~ 5 business days of the auditor's request.
12. LSP will process all paperwork ~~for~~ involving expenditures out of the CITY 2302 (spay/neuter prior to adoption) account and the CITY 2303 (veterinary services/spay/neuter at adoption) account and for the CDBG/HUD fund reimbursement account for approval by the Police Chief's designee. Disputes regarding approval between the designee and LSP will be resolved by the Lieutenant in charge of animal services.
13. LSP will provide a fidelity bond to CITY in the amount of \$50,000.

LSP services shall not include:

1. Enforcement of local and state laws pertaining to domestic animals.
2. Response to emergency calls.
3. Stray pick up.
4. Euthanasia of Shelter animals.
5. Quarantine of animals.
6. Intake at Shelter to include vaccinations and medical evaluations, treatment and logging of same.
7. Cleaning of Shelter kennels/cages and provision of food, litter and supplies for Shelter.
8. Payment of electricity, water, natural gas, telephone and trash removal.
9. Maintenance of the facility (to include repair of shelter office flooring), landscaping and Shelter area accessibility.
10. Shelter office equipment and supplies (computers, printers, faxes, paper toner, ink cartridges, and miscellaneous office supplies).
11. Maintenance of fire safety equipment.
12. Transport of large animals for veterinary services.

EXHIBIT B

DRUG AND ALCOHOL POLICY

CITY OF LODI

ADMINISTRATIVE POLICY AND PROCEDURE MANUAL

SUBJECT: DRUG-FREE WORKPLACE - *Policy*

DATE ISSUED: May 7, 2008

SECTION: D

REFERENCE: Drug Free Workplace Act of 1988; Americans With Disabilities Act of 1990; The Rehabilitation Act of 1973,

SECTION 1: PURPOSE

City of Lodi is committed to protecting the safety, health **and** well being of all employees and other associated individuals in our workplace. We recognize that alcohol abuse and drug use pose a significant threat to our goals. We have established a drug-free workplace program that balances **ow** respect for individuals with the need to maintain an alcohol and drug-free environment.

- This policy recognizes that employee involvement with alcohol **and** other drugs can be very disruptive, adversely affect the **quality** of work and performance of employees, pose serious health risks to users and others, and have a negative impact on productivity and morale.
- As a condition of employment, this organization requires that all employees adhere to a strict policy regarding the use and possession of drugs and alcohol.
- This organization encourages employees to voluntarily seek help with drug and alcohol problems.

SECTION 2: POLICY STATEMENT

It is a violation of **our** drug-free workplace **policy** to manufacture, use, possess, distribute, trade, and/or offer for sale alcohol, illegal drugs or intoxicants. Our drug-free workplace policy is intended to apply whenever anyone is representing or conducting business for **the** organization. Therefore, this policy applies during all working hours, lunch hours and whenever conducting business or representing the organization, while on paid standby, on or off City property including vehicles. Any individual who conducts business for the organization, is applying for a position, or is conducting business on the organization's property is covered by our drug-free workplace policy. Our policy includes, but is not limited to executive management, managers, supervisors, full-time employees, part-time employees, off-site employees, contractors, volunteers, interns and applicants.

Drug and alcohol consumption on and/or off the job can adversely affect job performance and employee/public safety. The City respects the privacy of its employees and contractors unless involvement with drugs and/or alcohol off the job adversely affects job performance and employee/public safety.

SECTION 3: COMPLIANCE

The U.S. Department of Transportation DOT has published 49 CFR Part 29, implementing the Drug-

Free Workplace Act of 1988, which requires the establishment of drug-free workplace policies and the reporting of certain drug-related offenses to the FTA. The **(DOT)** adopted 49 CFR ~~Part~~ 40 Revised), which outlines procedures for transportation workplace drug and alcohol testing programs. This Policy incorporates these federal requirements for employees when performing safety-sensitive functions, as well as other provisions as noted.

The Federal Transit Administration (FTA) of the U.S. Department of Transportation 49 CFR (Code of Federal Regulations) Part 655 and 382 mandates urine drug testing and breathalyzer alcohol testing, for employees performing safety-sensitive functions. The regulation prevents the performance of safety-sensitive functions when there is a positive test result or test refusal. **A safety-sensitive function is:**

- 1) Maintenance personnel, who perform various repairs to revenue vehicles (including repairs, overhaul and rebuilding)
- 2) Employees with a commercial driver's license that will operate a revenue service, or non-revenue service DOT funded transit vehicle (includes the operation of the Lifts or anyone who assists passengers to assure they are secured in the vehicles).
- 3) Drivers operating a revenue service vehicle, including when not in revenue service.
- 4) Dispatch personnel and supervisors who control the movement of any revenue service vehicle.

Federal Contractors and grantees must certify that they will provide drug-free workplaces as a pre-condition to receiving a contract or grant from any Federal agency. Failure to comply with the requirements of the Drug-Free Workplace Act may result in the following sanctions:

- A. suspension of payments under the grant;
- B. termination of the grant; or
- C. debarment from any grant award from any Federal agency for a period up to five (5) years.

Such penalties may be applied to contractors/grantees who have made false certifications of compliance with the Act.

SECTION 4:

COMPLIANCE OF EMPLOYEES

All employees shall agree to abide by this condition of employment and shall notify the City of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction.

In those instances where City employees, who are employed under Federal contract or grant, are convicted of criminal drug statutes violations occurring in the workplace, the City shall notify the grantor agency within ten (10) days after receiving notice from such employees or otherwise receiving actual notice of such convictions.

The City of Lodi shall require every covered employee who performs a safety-sensitive function as described in the FTA regulations Part 655 to submit to a pre-employment, post-accident, random, reasonable suspicion, return-to-duty or a follow-up drug and alcohol test as described in this policy. The City shall not permit any employee who refuses to submit to such tests to perform or continue to perform any safety-sensitive functions and is subject to disciplinary actions up to and including

termination.

Any employee (safety sensitive or non-safety sensitive) who refuses to comply with a request for testing, who fails to remain readily available for post-accident testing, who provides false information in connection with a test, or who attempts to falsify test results through tampering, contamination, adulteration or substitution, shall be removed from duty immediately. Refusal can include an inability to provide a specimen or breath alcohol sample without a valid medical explanation, as well as a verbal declaration, obstructive behavior, or physical absence resulting in the inability to conduct the test.

SECTION 5: ENFORCEMENT

In conjunction with **Human** Resources, department directors, managers, and supervisors are responsible for reasonable enforcement of this policy and the Drug-Free Workplace Procedure.

SECTION 6: SPECIFIC APPLICATIONS

Driver's License: Employees operating vehicles and equipment requiring the possession of a specified class, certificated or endorsed driver/operator license by the California Department of Motor Vehicles, or any other federal or state agency, may be subject to drug/alcohol screening in order to obtain and maintain such licensing

Accidents: Employees directly involved in an accident, including vehicular accidents, or who may have been **involved** in *the* sequence of events leading **up** to an accident, is subjected to testing as part of the accident investigation process. Notwithstanding laws to the contrary, the supervisor will determine whether employees should be directed for drug/alcohol testing based upon reasonable suspicion.

SECTION 7: Opportunities of Rehabilitation

The City of Lodi is committed to providing reasonable opportunities of rehabilitation to those employees with a drug or alcohol problem in accordance with the provisions of federal and/or state law.

An employee who has a drug and/or alcohol abuse problem **and** has not been selected for reasonable cause, random or post-accident testing or has not refused a **drug** or alcohol test or is not involved in disciplinary proceedings, may voluntarily **refer** her or himself to the **Human** Resources Manager or Internal **Services** Director, who will **refer the individual to the City's Substance Abuse Professional at the expense** of the employee. The SAP **will** evaluate the employee and make **specific** recommendation regarding the appropriate treatment. When an employee voluntarily refers her or himself for **treatment**, the employee may be eligible for sick leave and disability benefits. Employees will be allowed to take accumulated vacation time or may be eligible for unpaid time off to participate in any rehabilitation program at the employee's expense. In addition, the City of Lodi's voluntary Employee Assistance Program (EAP) is available to assist employees who seek help for alcohol or drug problems. Employees are encouraged to contact the EAP directly.

Supervisors/managers may refer an employee to the EAP for reasonable suspicion of **drug** abuse. Supervisors are encouraged to refer employees to the EAP for intervention. **EAP** services are confidential and supervisory referred employees are requested to sign a release of information for attendance purposes if sessions are scheduled during working hours.

SECTION 8: PRESCRIPTION MEDICATION /LEGAL DRUGS

A legally prescribed drug means that ~~an~~ individual has a prescription or other written approval from a physician for the use of a drug in the course of medical treatment. The misuse of legal drugs while performing transit business is prohibited at all times. Any employee taking any medication with a warning label will be required to provide the following:

The appropriate use of legally prescribed drugs and non-prescription medications is not prohibited. However, the use of any substance which carries a warning label that indicates that mental functioning, motor **skills** or judgment may be adversely affected must be reported to supervisory personnel. Medical advice should be sought, as appropriate, while taking such medication and before performing work-related duties.

An employee taking prescribed drugs which may interfere with safe work performance is required to provide written documentation from the prescribing physician indicating the level of interference with job performance. The prescription or approval must include the patient's name, the name of the substance, quantity/amount to be taken, the period of authorization and physician's signature that the employee may continue to perform safety-sensitive functions while taking such medication

The employee's immediate supervisor or department head shall determine on a case-by-case basis the employee's ability to perform employment responsibilities in conjunction with **Human** Resources. Failure to notify a supervisor may result in disciplinary action in accordance with **City** policy and procedure. An employee may be required to provide a statement from a licensed physician, indicating when the employee is able to work safely, or any limitations she/he may have while taking the prescribed medication.

SECTION 9:

PRE-EMPLOYMENT DRUG TESTING

As an employer the City is required to verify previous violations of DOT drug and alcohol regulations within the last two years of employment with a DOT regulated agency or employer.

An employer must obtain and review the information listed below from any DOT-regulated employer the employee performed safety-sensitive functions for in the previous two years. **The** information must be obtained **and** reviewed prior to the first time an employee performs safety-sensitive functions. If not feasible, the information should be obtained no later than thirty (30) days **after** the first time **an** employee performs safety-sensitive functions. The information obtained must include:

1. Information of the employee's alcohol test in which **a** breath alcohol concentration of 0.04 or greater was indicated.
2. Information of the employee's controlled substance test in which a positive result was indicated.
3. Any refusal to submit to **a** required alcohol or controlled substance test. (including verified adulterated or substituted drug test results)
4. Other violations of DOT agency drug and alcohol testing regulations.

Applicants **will** be asked whether her or he has tested positive, or refused to test on a pre-employment drug or alcohol test while trying to obtain safety sensitive transportation work from an employer covered by a DOT agency during the ~~past~~ two years. If applicant admits that he or she had a positive test or refusal to test, the applicant will not be eligible for the position. Job offers made by the City of Lodi are

contingent upon the successful completion of a drug and/or alcohol screening. Testing **for** temporary hires will be evaluated on an individual basis by classification.

EXHIBIT C

CERTIFICATES OF INSURANCE